

Supreme Court Preserves Limits on Autodialed Calls to Cell Phones, Overturns Government Debt Collection Exception

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In a widely anticipated decision in [*Barr v. American Association of Political Consultants*](#), the US Supreme Court determined that an exception to the Telephone Consumer Protection Act (TCPA) that allowed robocalls to mobile phones to collect government debts was unconstitutional, but declined to overturn the broader ban on most robocalls to mobile phones without the prior express consent of the recipient. The decision reveals significant differences among the justices on how to apply the First Amendment to the TCPA, but also leaves that current regime in place for all but a fraction of entities that use autodialed calls. As a result, entities that make autodialed calls should continue to obtain prior express written consent for those calls.

The specific issue before the court was whether a 2015 law amending the TCPA to allow autodialed calls intended to collect government debts, including debts guaranteed by the federal government, violated the First Amendment by discriminating against other types of robocalls, including calls from political campaigns. Six justices found that the amendment violated the First Amendment because it discriminated among different types of content and because the government could not provide a sufficient basis for the discrimination.

The government debts provision was an exception to the general rule that it is illegal to make autodialed calls to a cell phone without prior express consent from the phone subscriber. The petitioners in the case asked the court to overturn the general rule as well based on a claim that it could not be separated from the exception. The court disagreed with the petitioners and held that the general ban could be separated from the exception and therefore was unaffected by the conclusion that the exception was unconstitutional.

The court also concluded that “no one should be penalized or held liable for making robocalls to collect government debt” between the time the amendment was enacted and the date the final order in this case goes into effect. As a result, no entity that made calls under the exception prior to this decision will be treated as violating the TCPA.

While the main consequence of this decision is that calls to mobile numbers for collection of government debt are now treated the same as other calls to mobile numbers, it also is an unusual decision that points to significant differences among the justices. While six justices agreed that the debt collection exception was unconstitutional, they applied three different analytic standards in reaching that conclusion, and one of the justices who agreed it was unconstitutional applied the same standard as the three dissenters. This suggests that a case involving a different exception could lead to a different result. It also reveals significant tension in how to address First Amendment issues related to commercial activities, with the dissenters following a series of cases on commercial speech, which is subject to somewhat greater limits than other speech, and the plurality opinion not considering those cases at all.

In practical terms, this decision affects only a fraction of the calls covered by the TCPA. For most entities that use autodialed calls, the decision does not affect their operations or their potential liability under the law.

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